

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MARTEN GROUP, INC. d/b/a
SENERGY MEDICAL GROUP and
SCOTT TENNANT,

Plaintiffs,

v.

JERALD TENNANT, MD, JOHN
TENNANT, TERESA JESSEN
TENNANT, JARED TENNANT,
TENNANT DEVICES AND
ACCESSORIES, LLC, and
CURADOR, LLC,

Defendants.

Case No. 3:24-cv-01852

JURY TRIAL DEMANDED

**APPENDIX TO DEFENDANTS' REPLY IN SUPPORT OF EMERGENCY
MOTION FOR LIMITED PROTECTIVE ORDER RE: PLAINTIFFS'
NOTICE OF DEPOSITION OF JERALD TENNANT, M.D.**

Pursuant to Local Rule 7.1, Defendants submit the attached evidence referenced in its Reply in Support of Emergency Motion for Limited Protective Order regarding Plaintiffs' Notice of Deposition of Dr. Tennant.

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| <u>EXHIBIT NO.</u> | <u>DESCRIPTION</u> | <u>APP. PAGE NOS.</u> |
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| A | Declaration of Tyler L. Farmer in Support of Defendants' Reply in Support of Motion for Emergency Protective Order | APP 1 – 3 |

| <u>EXHIBIT NO.</u> | <u>DESCRIPTION</u> | <u>APP. PAGE NOS.</u> |
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| A-1 | October 3, 2024 email exchange between counsel summarizing the meet and confer regarding Dr. Tennant's deposition per the Court's October 2, 2024 electronic order | APP 4 – 9 |
| A-2 | Google search results obtained October 4, 2024, by Tyler L. Farmer's assistant reflecting approximate costs for a roundtrip flight from Seattle to Dallas and a one-night stay at a hotel in Dallas | APP 10 - 14 |

Dated: October 4, 2024

Respectfully submitted,

/s/Tyler L. Farmer

Tyler L. Farmer
WSBA No. 39912

Pro Hac Vice

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that this document is being served via ECF on counsel of record.

/s/Tyler L. Farmer

Tyler L. Farmer

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MARTEN GROUP, INC. d/b/a
SENERGY MEDICAL GROUP and
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v.

JERALD TENNANT, MD, JOHN
TENNANT, TERESA JESSEN
TENNANT, JARED TENNANT,
TENNANT DEVICES AND
ACCESSORIES, LLC, and
CURADOR, LLC,

Defendants.

Case No. 3:24-cv-01852

JURY TRIAL DEMANDED

**DECLARATION OF TYLER L. FARMER IN SUPPORT OF DEFENDANTS’
REPLY IN SUPPORT OF EMERGENCY MOTION FOR PROTECTIVE
ORDER RE: PLAINTIFFS’ NOTICE OF DEPOSITION**

I, Tyler L. Farmer, hereby declare as follows:

1. I am one of the attorneys for Defendants in this matter. I am over age 18 and am competent to be a witness. I am making this declaration based on facts within my own personal knowledge.

2. Attached as **Exhibit A-1** is a true and correct copy of an email chain between Plaintiffs/Counter-Defendants’ counsel, Michael Barbee, and myself summarizing our meet and confer on October 3, 2024. Among other issues identified for Plaintiffs’ counsel during our conferral, I explained that Zoom is an effective method for deposing Dr. Tennant, avoids the need for anyone to travel (witnesses,

lead counsel, and even opposing counsel), allows Dr. Tennant to utilize his office for the deposition particularly given his issues with his eyesight, and minimizes the need for in-person interaction which has the potential for negative consequences for his patients.

3. Dr. Tennant will bear the cost for counsel to travel to Dallas. Assuming no flight delays, one-way travel to Dallas will require approximately seven to eight hours of travel time (to the airport, at the airport, in-flight time, and to downtown Dallas). That travel will need to be repeated the following day on a return flight. A round trip ticket from Seattle to Dallas is approximately \$475. A hotel in downtown Dallas ranges from \$70 - \$350 per night. Attached as **Exhibit A-2** are the search results reflecting these approximate costs.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Seattle, Washington on this 4th day of October, 2024.

s/Tyler L. Farmer

Tyler L. Farmer, WSBA #39912

CERTIFICATE OF SERVICE

I certify that this document is being served via ECF on counsel of record.

/s/Tyler L. Farmer
Tyler L. Farmer

Exhibit A-1

Erin Fujita

From: Tyler Farmer
Sent: Thursday, October 3, 2024 1:56 PM
To: Michael Barbee
Cc: Ariel Martinez; Chelsey Mam; Justin Hanna; Kellie McDonald; Erin Fujita; Casey Griffith; Kirk Voss; Joshua Yun
Subject: RE: Activity in Case 3:24-cv-01852-E Marten Group Inc et al v. Tennant et al Order on Motion for Hearing

Michael,

Thanks for the follow up email. As we said during the call, we think that the court would appreciate the parties reaching a compromise to resolve the deposition logistics dispute. Splitting the deposition over two days (one of which conflicts with Dr. Tennant's patient treatment schedule) is not a compromise. We repeat our offer to compromise as follows:

1. Witness and counsel appear via Zoom with court reporter etc.
2. Deposition starts at 11:30 Central (9:30 Pacific) and has on-record duration of 5 hours with our agreement that plaintiffs can depose Dr. Tennant again at your request for an additional 5 hours as discovery progresses.
3. Breaks as needed for witness, particularly to rest Dr. Tennant's eyes in light of his impaired vision.

You said that you'd need to consult with Casey but that the Zoom likely was unacceptable. You offered that I could appear by Zoom but that the witness needed to be in person – my appearing remotely already is allowed by the rules.

I explained that Zoom depositions are equally effective and would allow your side full opportunity to examine the witness for five hours about the subjects germane to the pending motion. I noted that Dr. Tennant is 84 years, has patients scheduled for office visits on both October 8 and October 10, and that proceeding by Zoom would reduce the burden on him by saving considerable time and energy on traveling to the deposition (noted for downtown Dallas), allow him to rest his eyes in the comfort of his own office, and would not diminish your opportunity to question him. In addition, it bears noting that Dr. Tennant's patients often suffer from serious medical conditions (including cancer). A Zoom deposition from his office eliminates the potential complications introduced with requiring Dr. Tennant to travel to downtown and personal interactions for several hours.

Our compromise presents you with ample opportunity to depose Dr. Tennant both for the PI motion and more generally during later discovery proceedings while reducing unnecessary expense and burden. We hope that you'll reconsider your position rather than require additional briefing and a court hearing.

Best regards,
Tyler



Tyler Farmer
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Bryan Cave Leighton Paisner LLP - Seattle, WA USA
tyler.farmer@bclplaw.com
T: +1 206 294 7411

From: Michael Barbee <michael.barbee@griffithbarbee.com>
Sent: Thursday, October 3, 2024 1:46 PM
To: Tyler Farmer <Tyler.Farmer@bclplaw.com>
Cc: Ariel Martinez <ariel.martinez@bclplaw.com>; Chelsey Mam <Chelsey.Mam@bclplaw.com>; Justin Hanna <Justin.Hanna@bclplaw.com>; Kellie McDonald <Kellie.McDonald@bclplaw.com>; Erin Fujita <erin.fujita@bclplaw.com>; Casey Griffith <casey.griffith@griffithbarbee.com>; Kirk Voss

Subject: Re: Activity in Case 3:24-cv-01852-E Marten Group Inc et al v. Tennant et al Order on Motion for Hearing

Hi Tyler,

Thank you for the call.

As we discussed, you proposed:

- Limit the deposition to 5 hours.
- Agree we could depose Dr. Tennant later in the case for another 5 hours, for 10 total deposition hours.
- Your strong preference is to start the deposition at 11:30 CST.
- The above proposals, however, are conditioned on the deposition being conducted via Zoom / remotely.

Unfortunately, we are unable to agree to your proposal because we do not agree to conduct the deposition remotely.

As we discussed, in addition to our previous accommodations (2 days at 3.5 hours each day, start at 10:30 a.m., as many breaks as needed), we are agreeable to allow Seattle-based counsel to attend and defend the deposition via Zoom. This proposal stands with no conditions, no matter how things shake out.

We will also work with you on deposition dates as we've noted, so long as we have sufficient time between the depositions and our deadline to respond to your PI motion, which would possibly mean an extension of the 10/18 response deadline is required.

My understanding, however, is Zoom is a sticking point so we will file our response today.

Sincerely,

Michael Barbee | Managing Partner
Griffith Barbee PLLC
1722 Routh St., Ste. 910, Dallas, TX 75201
O: 214.446.6023 C: 214.491.7620

From: Michael Barbee <michael.barbee@griffithbarbee.com>

Date: Thursday, October 3, 2024 at 11:58 AM

To: Tyler Farmer <Tyler.Farmer@bclplaw.com>

Cc: Ariel Martinez <ariel.martinez@bclplaw.com>, Chelsey Mam <Chelsey.Mam@bclplaw.com>, Justin Hanna <Justin.Hanna@bclplaw.com>, Kellie McDonald <Kellie.McDonald@bclplaw.com>, Erin Fujita <erin.fujita@bclplaw.com>, Casey Griffith <casey.griffith@griffithbarbee.com>, Kirk Voss <kirk.voss@griffithbarbee.com>, Joshua Yun <joshua.yun@griffithbarbee.com>

Subject: Re: Activity in Case 3:24-cv-01852-E Marten Group Inc et al v. Tennant et al Order on Motion for Hearing

Sure. 3pm central time works for me. You can call my cell. 214-491-7620.

Thanks,

Michael Barbee | Managing Partner
Griffith Barbee PLLC
1722 Routh St., Ste. 910, Dallas, TX 75201
O: 214.446.6023 C: 214.491.7620

From: Tyler Farmer <Tyler.Farmer@bclplaw.com>

Date: Thursday, October 3, 2024 at 11:57 AM

To: Michael Barbee <michael.barbee@griffithbarbee.com>

Cc: Ariel Martinez <ariel.martinez@bclplaw.com>, Chelsey Mam <Chelsey.Mam@bclplaw.com>, Justin Hanna <Justin.Hanna@bclplaw.com>, Kellie McDonald <Kellie.McDonald@bclplaw.com>, Erin Fujita <erin.fujita@bclplaw.com>, Casey Griffith <casey.griffith@griffithbarbee.com>, Kirk Voss <kirk.voss@griffithbarbee.com>, Joshua Yun <joshua.yun@griffithbarbee.com>

Subject: Re: Activity in Case 3:24-cv-01852-E Marten Group Inc et al v. Tennant et al Order on Motion for Hearing

Michael,

We're available at 1pm Pacific - does that work for you? Thanks, Tyler

Tyler L. Farmer

Partner

Bryan Cave Leighton Paisner LLP - Seattle, WA USA

tyler.farmer@bclplaw.com

Direct: (206)294-7411

On Oct 3, 2024, at 8:06 AM, Michael Barbee <michael.barbee@griffithbarbee.com> wrote:

Counsel,

Given Judge Horan's order below, do you have availability today to confer?

Sincerely,

Michael Barbee | Managing Partner

Griffith Barbee PLLC

1722 Routh St., Ste. 910, Dallas, TX 75201

O: 214.446.6023 C: 214.491.7620

From: ecf_txnd@txnd.uscourts.gov <ecf_txnd@txnd.uscourts.gov>

Date: Wednesday, October 2, 2024 at 5:25 PM

To: Courtmail@txnd.uscourts.gov <Courtmail@txnd.uscourts.gov>

Subject: Activity in Case 3:24-cv-01852-E Marten Group Inc et al v. Tennant et al Order on Motion for Hearing

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U.S. District Court

Northern District of Texas

Notice of Electronic Filing

The following transaction was entered on 10/2/2024 at 5:23 PM CDT and filed on 10/2/2024

Case Name: Marten Group Inc et al v. Tennant et al

Case Number: [3:24-cv-01852-E](#)

Filer:

Document Number: 37(No document attached)

Docket Text:

ELECTRONIC ORDER:

A response to [33] Defendants' Emergency Motion for Limited Protective Order re: Plaintiffs' Notice of Deposition of Jerald Tennant, M.D. must be filed by 7:00 p.m. Central Time on Thursday, October 3, 2024.

Any reply must be filed by 4:00 p.m. Central Time on Friday, October 4, 2024.

The Court grants the request for a hearing [Dkt. No. 35] and will convene an oral argument over Zoom at 11:00 a.m. Central Time on Monday, October 7, 2024. The Court's staff will separately circulate the Zoom log-in information.

But the parties' counsel are encouraged to work out their disputes on the logistics of this deposition in advance of this oral argument and to advise the Court that the matter has been resolved. Taking a deposition of a key witness to support or oppose a preliminary injunction motion is not uncommon -- perhaps even less so where, as here, the discovery period has begun. But neither is conducting a deposition over Zoom. And Federal Rule of Civil Procedure 30(d)(1) provides that, "[u]nless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours," and, under Rule 30(a)(2)(A)(ii), absent written stipulation, a party must seek leave of court before a person whose deposition has already been taken in an action may be deposed a second time. And, so, it is also not uncommon for parties to stipulate -- or for courts to order -- a second deposition of any key witness whose early deposition was limited to less than 7 hours.

(Ordered by Magistrate Judge David L. Horan on 10/2/2024.)

3:24-cv-01852-E Notice has been electronically mailed to:

Casey L Griffith casey.griffith@griffithbarbee.com, docketing@griffithbarbee.com

Kirk Austin Voss kirk.voss@griffithbarbee.com, Docketing@griffithbarbee.com

Michael Collin Barbee michael.barbee@griffithbarbee.com,

Justin David Hanna justin.hanna@bclplaw.com, carolyn.herrera@bclplaw.com

Joshua Seungwoo Yun joshua.yun@griffithbarbee.com, Docketing@griffithbarbee.com

Tyler Lawrence Farmer tyler.farmer@bclplaw.com, erin.fujita@bclplaw.com,
florine.fujita@bclplaw.com, kellie.mcdonald@bclplaw.com

Ariel Martinez ariel.martinez@bclplaw.com

Chelsey L Mam chelsey.mam@bclplaw.com

3:24-cv-01852-E Notice required by federal rule will be delivered by other means (as detailed in the Clerk's records for orders/judgments) to:

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Exhibit A-2

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Round trip 1 Economy

Seattle



Dallas



Tue, Oct 8



Wed, Oct 9



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Dur

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Cheapest from \$329

Top departing flights

Ranked based on price and convenience Prices include required taxes + fees for 1 adult. Optional charges and [bag fees](#) may apply.

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7:41 AM 1:37 PM

SEA DFW

Nonstop · 3 hr 56 min · Alaska

\$475

round trip

227 kg CO₂e

Avg emissions



5:30 AM 11:23 AM

SEA DFW

Nonstop · 3 hr 53 min · American

\$475

round trip

226 kg CO₂e

Avg emissions



8:25 AM 2:32 PM

SEA DFW

Nonstop · 4 hr 7 min · Delta

\$475

round trip

268 kg CO₂e

+21% emissions



The cheapest time to book is usually earlier, about 1–3 months before takeoff



Prices are currently high

View price history

Track prices Oct 8–9

Any dates



Date grid



Price graph

Other departing flights



9:07 AM 4:59 PM

SEA DFW

1 stop · 5 hr 52 min · Frontier

\$329

round trip

184 kg CO₂e

-17% emissions



5:30 AM 10:56 PM

SEA DFW

1 stop · 15 hr 26 min · Spirit

Self transfer

\$426

round trip

265 kg CO₂e

+20% emissions

10:51 PM 4:30 AM⁺¹

SEA DFW

Nonstop · 3 hr 39 min · Alaska

\$469

round trip

175 kg CO₂e

-21% emissions



Sign in

Skip to main content

Accessibility feedback

Nonstop · 3 hr 53 min · Alaska

175 kg CO₂e

-21% emissions ⓘ



8:57 AM → 2:50 PM

SEA DFW

Nonstop · 3 hr 53 min · Alaska

\$471

round trip

209 kg CO₂e

Avg emissions ⓘ



11:27 AM → 5:20 PM

SEA DFW

Nonstop · 3 hr 53 min · Alaska

\$471

round trip

203 kg CO₂e

-8% emissions ⓘ



6:11 PM → 11:59 PM

SEA DFW

Nonstop · 3 hr 48 min · Alaska

\$471

round trip

218 kg CO₂e

Avg emissions ⓘ



7:19 AM → 1:15 PM

SEA DFW

Nonstop · 3 hr 56 min · American

\$475

round trip

180 kg CO₂e

-19% emissions ⓘ



10:16 AM → 4:12 PM

SEA DFW

Nonstop · 3 hr 56 min · American

\$475

round trip

226 kg CO₂e

Avg emissions ⓘ



11:51 AM → 5:50 PM

SEA DFW

Nonstop · 3 hr 59 min · American

\$475

round trip

226 kg CO₂e

Avg emissions ⓘ



12:53 PM → 6:45 PM

SEA DFW

Nonstop · 3 hr 52 min · American

\$475

round trip

226 kg CO₂e

Avg emissions ⓘ



2:01 PM → 7:54 PM

SEA DFW

Nonstop · 3 hr 53 min · American

\$475

round trip

226 kg CO₂e

Avg emissions ⓘ



3:47 PM → 9:38 PM

SEA DFW

Nonstop · 3 hr 51 min · American

\$475

round trip

226 kg CO₂e

Avg emissions ⓘ



5:55 PM → 11:50 PM

SEA DFW

Nonstop · 3 hr 55 min · American

\$475

round trip

226 kg CO₂e

Avg emissions ⓘ



5:55 PM → 11:52 PM

SEA DFW

Nonstop · 3 hr 57 min · Delta

\$475

round trip

295 kg CO₂e

+33% emissions ⓘ

11:59 PM → 5:52 AM⁺¹

SEA DFW

Nonstop · 3 hr 53 min · American

\$475

round trip

180 kg CO₂e

-19% emissions ⓘ



La Quinta Inn & Suites by Wyndham Dallas Addison Galleria
4.0 * (1,340)

- 2-star hotel
- Free breakfast
- Free Wi-Fi
- Free parking
- Outdoor pool
- Hot tub
- Air conditioning
- Pet-friendly
- Fitness center

[View prices](#)

The Gaston Dallas Bed and Breakfast
4.9 * (217)

GREAT DEAL \$178

- Free breakfast
- Free Wi-Fi
- Free parking
- Air conditioning
- Bar
- Smoke-free property

[View prices](#)

Omni Dallas Hotel
4.5 * (9,135)

\$289

- 4-star hotel
- Breakfast (\$)
- Wi-Fi (\$)
- Parking (\$)
- Outdoor pool
- Hot tub
- Air conditioning
- Pet-friendly
- Fitness center

[View prices](#)

La Quinta Inn & Suites by Wyndham Dallas Grand Prairie North
4.3 * (1,006)

GREAT DEAL \$76

- 3-star hotel
- Free breakfast
- Free Wi-Fi
- Free parking
- Outdoor pool
- Hot tub
- Air conditioning
- Pet-friendly
- Fitness center

[View prices](#)

Comfort Inn & Suites Dallas Medical-Market Center
3.8 * (848)

DEAL \$75

- 3-star hotel
- Free breakfast
- Free Wi-Fi
- Free parking
- Pools
- Hot tub
- Air conditioning
- Fitness center
- Airport shuttle

[View prices](#)

The Joule
4.5 * (1,612) · Excellent location

\$428

- 5-star hotel
- Breakfast (\$)
- Free Wi-Fi
- Parking
- Pools
- Air conditioning
- Pet-friendly
- Fitness center
- Spa

[View prices](#)

Hilton Anatole
4.3 * (8,782) · Eco-certified

\$184

- 4-star hotel
- Breakfast (\$)
- Free Wi-Fi
- Parking (\$)
- Pools
- Hot tub
- Air conditioning
- Pet-friendly
- Fitness center

[View prices](#)

Magnolia Dallas Downtown
3.9 * (2,556) · Excellent location

\$114

- 4-star hotel
- Free Wi-Fi
- Parking (\$)
- Air conditioning
- Pet-friendly
- Fitness center
- Breakfast
- Kitchen in some roo...
- Full-service laundry

[View prices](#)

Le Méridien Dallas by the Galleria
4.1 * (1,613)

\$128

- 4-star hotel
- Breakfast (\$)
- Free Wi-Fi
- Parking (\$)
- Indoor pool
- Air conditioning
- Pet-friendly
- Fitness center
- Bar

[View prices](#)

Hyatt Place Dallas/rockwall
4.5 * (4)

\$121

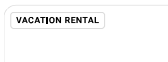
- Sleeps 2
- 1 bedroom
- 1 bathroom
- 1 bed
- Air conditioning
- Kid-friendly
- Elevator
- Heating
- Ironing board

[View details](#)

The Adolphus
4.5 * (2,775) · Excellent location

\$349

- 4-star hotel
- Breakfast (\$)
- Free Wi-Fi
- Parking (\$)
- Outdoor pool
- Air conditioning
- Pet-friendly
- Fitness center
- Spa

[View prices](#)

Dallas downtown skyline view! Free Parking!
Excellent location

\$93